

MONTANA LEGISLATIVE HISTORY

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Chapter 303 ~~19~~ 2001

Bill H _____ S 459 Original bill & history / C

H. Committee on Human Service

S. Committee on Pub. H. Welfare + Safety

Hearing Date(s) 3/21 / C

Hearing Date(s) 2/16 / C

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Date Out _____ C

Did this bill originate in an interim committee? _____ Yes / No

Committee _____

Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendant information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

- CHALLENGES TO ACTIONS UNDER THE MONTANA ENVIRONMENTAL POLICY ACT MAY ONLY BE BROUGHT IN DISTRICT COURT OR FEDERAL COURT WITHIN 60 DAYS OF A FINAL AGENCY ACTION; PROVIDING AN EXCEPTION TO PERMITTING TIME LIMITS IF BOARD REVIEW OF CERTAIN AGENCY DECISIONS IS REQUESTED; AMENDING SECTIONS 75-1-201, 75-2-211, 75-2-218, 75-10-922, 75-20-216, 75-20-231, 76-4-125, 82-4-122, 82-4-231, 82-4-337, AND 82-4-432, MCA; AND PROVIDING AN APPLICABILITY DATE. 1420
- 300 (*Senate Bill No. 408; McCarthy*) REQUIRING THAT AN AGENCY DETERMINATION OF ENVIRONMENTAL IMPACT SIGNIFICANCE OR RECOMMENDATION THAT A DETERMINATION OF SIGNIFICANCE BE MADE FOR A PROJECT SUBJECT TO THE MONTANA ENVIRONMENTAL POLICY ACT BE ENDORSED BY THE AGENCY DIRECTOR; AUTHORIZING THE PROJECT SPONSOR TO REQUEST A REVIEW OF THE SIGNIFICANCE DETERMINATION OR RECOMMENDATION BY THE APPROPRIATE BOARD; PROVIDING A DEFINITION; AMENDING SECTION 75-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1440
- 301 (*Senate Bill No. 431; Stonington*) TO CLARIFY THE LAW REGARDING THE REGULATION OF THE COMMERCIAL COLLECTION OF CERTAIN NONGAME WILDLIFE; DEFINING "COMMERCIAL PURPOSES"; PROVIDING THAT CERTAIN NONGAME WILDLIFE MAY NOT BE TAKEN FOR COMMERCIAL PURPOSES WITHOUT AUTHORIZATION BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; PROVIDING EXCEPTIONS; AND AMENDING SECTION 87-5-102, MCA 1443
- 302 (*Senate Bill No. 443; Butcher*) REQUIRING THAT LOCAL GOVERNMENT PUBLIC RECORDS BE OFFERED TO CERTAIN ENTITIES AND TO THE GENERAL PUBLIC BEFORE BEING DESTROYED; EXPANDING THE MEMBERSHIP OF THE LOCAL GOVERNMENT RECORDS COMMITTEE; AND AMENDING SECTION 2-6-402, MCA 1445
- 303 (*Senate Bill No. 459; Franklin*) PROVIDING THAT ADVANCED PRACTICE REGISTERED NURSES WITH A CLINICAL SPECIALTY IN PSYCHIATRIC MENTAL HEALTH NURSING ARE ALLOWED TO PERFORM EXAMINATIONS AND TO REPORT AND TESTIFY REGARDING A DEFENDANT'S FITNESS TO PROCEED OR MENTAL CONDITION; AMENDING SECTIONS 46-1-202, 46-14-202, 46-14-204, 46-14-205, 46-14-213, 46-14-302, AND 46-15-323, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1446
- 304 (*House Bill No. 447; Lewis*) APPROPRIATING UP TO \$1 MILLION FROM THE FEDERAL SPECIAL REVENUE FUND TO PLAN FOR RECONSTRUCTING AND PAVING THE ROAD FROM STATE SECONDARY HIGHWAY 279 TO MARYSVILLE; AND PROVIDING AN EFFECTIVE DATE 1453
- 305 (*House Bill No. 608; Haines*) PROVIDING A PROCEDURE FOR RECORDING NONMONETARY SETTLEMENTS OF CONTESTED CASES; AMENDING SECTIONS 2-4-603 AND 17-2-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1454
- 306 (*House Bill No. 642; Story*) CLARIFYING THE DISTRIBUTION OF OIL AND NATURAL GAS PRODUCTION TAXES FOR THE PURPOSES OF THE RESOURCE INDEMNITY AND GROUND WATER ASSESSMENT TAX AND FOR OTHER PURPOSES; AMENDING SECTIONS 15-1-501, 15-36-324, AND 82-11-135, MCA: AND

SB 459 Introduced by Franklin

LC1312 Drafter: Fox

Allow APRNs to Examine, Report, and Testify on Defendant's Mental Condition

2/13	Introduced		
2/13	First Reading		
2/13	Referred to Public Health, Welfare and Safety		
2/16	Hearing		
2/19	Committee Executive Action--Bill Passed	9	0
2/19	Committee Report--Bill Passed		
2/20	2nd Reading Passed on Voice Vote	50	0
2/21	3rd Reading Passed	50	0
	Transmitted to House		
3/03	Referred to Human Services		
3/21	Hearing		
3/22	Committee Executive Action--Bill Concurred	17	1
3/22	Committee Report--Bill Concurred		
4/04	2nd Reading Concurred	97	3
4/05	3rd Reading Concurred	91	9
	Returned to Senate		
4/05	Sent to Enrolling		
4/07	Returned from Enrolling		
4/10	Signed by President		
4/10	Signed by Speaker		
4/12	Transmitted to Governor		
4/20	Signed by Governor		
4/20	Chapter Number Assigned		
	Chapter Number 303		
	Effective Date: 4/20/2001 - All Sections		

SB 460 Introduced by Franklin

LC1603 Drafter: Everts

Revise Functional Separation for Utilities

2/13	Introduced
2/13	First Reading
2/13	Referred to Energy and Telecommunications
2/23	Missed Deadline for General Bill Transmittal

SB 461 Introduced by Franklin

LC1313 Drafter: Fox

Informed Consent for Hysterectomy

2/13	Introduced		
2/13	First Reading		
2/13	Referred to Public Health, Welfare and Safety		
2/17	Hearing		
2/20	Committee Executive Action--Bill Passed as Amended	9	1
2/20	Committee Report--Bill Passed as Amended		
2/22	2nd Reading Passed on Voice Vote	50	0
2/22	3rd Reading Passed	50	0
	Transmitted to House		
3/03	Referred to Human Services		
3/26	Hearing		
3/26	Tabled in Committee		
	Died in Standing Committee		

INTRODUCED BY Sen. Franken ^{Sen. Franken} BILL NO. 459
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT ADVANCED PRACTICE REGISTERED NURSES WITH A CLINICAL SPECIALTY IN PSYCHIATRIC MENTAL HEALTH NURSING ARE ALLOWED TO PERFORM EXAMINATIONS AND TO REPORT AND TESTIFY REGARDING A DEFENDANT'S FITNESS TO PROCEED OR MENTAL CONDITION; AMENDING SECTIONS 46-1-202, 46-14-202, 46-14-204, 46-14-205, 46-14-213, 46-14-302, AND 46-15-323, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-1-202, MCA, is amended to read:

"46-1-202. Definitions. As used in this title, unless the context requires otherwise, the following definitions apply:

(1) "Advanced practice registered nurse" means an individual certified as an advanced practice registered nurse provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.

~~(1)~~ (2) "Arraignment" means the formal act of calling the defendant into open court to enter a plea answering a charge.

~~(2)~~ (3) "Arrest" means taking a person into custody in the manner authorized by law.

~~(3)~~ (4) "Arrest warrant" means a written order from a court directed to a peace officer or to some other person specifically named commanding that officer or person to arrest another. The term includes the original warrant of arrest and a copy certified by the issuing court.

~~(4)~~ (5) "Bail" means the security given for the primary purpose of ensuring the presence of the defendant in a pending criminal proceeding.

~~(5)~~ (6) "Charge" means a written statement that accuses a person of the commission of an offense, that is presented to a court, and that is contained in a complaint, information, or indictment.

~~(6)~~ (7) "Conviction" means a judgment or sentence entered upon a guilty or nolo contendere plea or upon a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

1 ~~(7)~~(8) "Court" means a place where justice is judicially administered and includes the judge of
2 court.

3 ~~(8)~~(9) "Included offense" means an offense that:

4 (a) is established by proof of the same or less than all the facts required to establish
5 commission of the offense charged;

6 (b) consists of an attempt to commit the offense charged or to commit an offense otherw
7 included in the offense charged; or

8 (c) differs from the offense charged only in the respect that a less serious injury or risk to
9 same person, property, or public interest or a lesser kind of culpability suffices to establish its commission.

10 ~~(9)~~(10) "Judge" means a person who is vested by law with the power to perform judicial functions.

11 ~~(10)~~(11) "Judgment" means an adjudication by a court that the defendant is guilty or not guilty
12 and if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.

13 ~~(11)~~(12) "Make available for examination and reproduction" means to make material and
14 information that is subject to disclosure available upon request at a designated place during specified
15 reasonable times and to provide suitable facilities or arrangements for reproducing it. The term does not
16 mean that the disclosing party is required to make copies at its expense, to deliver the materials or
17 information to the other party, or to supply the facilities or materials required to carry out tests on
18 disclosed items. The parties may by mutual consent make other or additional arrangements.

19 ~~(12)~~(13) "New trial" means a reexamination of the issue in the same court before another jury after
20 a verdict or finding has been rendered.

21 ~~(13)~~(14) "Notice to appear" means a written direction that is issued by a peace officer and that
22 requests a person to appear before a court at a stated time and place to answer a charge for the alleged
23 commission of an offense.

24 ~~(14)~~(15) "Offense" means a violation of any penal statute of this state or any ordinance of
25 political subdivisions.

26 ~~(15)~~(16) "Parole" means the release to the community of a prisoner by a decision of the board of
27 pardons and parole prior to the expiration of the prisoner's term subject to conditions imposed by the board
28 of pardons and parole and the supervision of the department of corrections.

29 ~~(16)~~(17) "Peace officer" means any person who by virtue of the person's office or public
30 employment is vested by law with a duty to maintain public order and make arrests for offenses while

1 acting within the scope of the person's authority.

2 ~~(17)~~(18) "Persistent felony offender" means an offender who has previously been convicted of a
3 felony and who is presently being sentenced for a second felony committed on a different occasion than
4 the first. An offender is considered to have been previously convicted of a felony if:

5 (a) the previous felony conviction was for an offense committed in this state or any other
6 jurisdiction for which a sentence of imprisonment in excess of 1 year could have been imposed;

7 (b) less than 5 years have elapsed between the commission of the present offense and either:

8 (i) the previous felony conviction; or

9 (ii) the offender's release on parole or otherwise from prison or other commitment imposed as a
10 result of a previous felony conviction; and

11 (c) the offender has not been pardoned on the ground of innocence and the conviction has not
12 been set aside at the postconviction hearing.

13 ~~(18)~~(19) "Place of trial" means the geographical location and political subdivision in which the court
14 that will hear the cause is situated.

15 ~~(19)~~(20) "Preliminary examination" means a hearing before a judge for the purpose of determining
16 if there is probable cause to believe a felony has been committed by the defendant.

17 ~~(20)~~(21) "Probation" means release by the court without imprisonment of a defendant found guilty
18 of a crime. The release is subject to the supervision of the department of corrections upon direction of the
19 court.

20 ~~(21)~~(22) "Prosecutor" means an elected or appointed attorney who is vested by law with the
21 power to initiate and carry out criminal proceedings on behalf of the state or a political subdivision.

22 ~~(22)~~(23) "Same transaction" means conduct consisting of a series of acts or omissions that are
23 motivated by:

24 (a) a purpose to accomplish a criminal objective and that are necessary or incidental to the
25 accomplishment of that objective; or

26 (b) a common purpose or plan that results in the repeated commission of the same offense or
27 effect upon the same person or the property of the same person.

28 ~~(23)~~(24) "Search warrant" means an order that is:

29 (a) in writing;

30 (b) in the name of the state;

1 (c) signed by a judge;

2 (d) a particular description of the place, object, or person to be searched and the evidence
3 contraband, or person to be seized; and

4 (e) directed to a peace officer and commands the peace officer to search for evidence, contraband
5 or persons.

6 ~~(24)~~(25) "Sentence" means the judicial disposition of a criminal proceeding upon a plea of guilty
7 or nolo contendere or upon a verdict or finding of guilty.

8 ~~(25)~~(26) "Statement" means:

9 (a) a writing signed or otherwise adopted or approved by a person;

10 (b) a video or audio recording of a person's communications or a transcript of the communication
11 and

12 (c) a writing containing a summary of a person's oral communications or admissions.

13 ~~(26)~~(27) "Summons" means a written order issued by the court that commands a person to appear
14 before a court at a stated time and place to answer a charge for the offense set forth in the order.

15 ~~(27)~~(28) "Superseded notes" means handwritten notes, including field notes, that have been
16 substantially incorporated into a statement. The notes may not be considered a statement and are not
17 subject to disclosure except as provided in 46-15-324.

18 ~~(28)~~(29) "Temporary road block" means any structure, device, or means used by a peace officer
19 for the purpose of controlling all traffic through a point on the highway where all vehicles may be slowed
20 or stopped.

21 ~~(29)~~(30) "Witness" means a person whose testimony is desired in a proceeding or investigation
22 by a grand jury or in a criminal action, prosecution, or proceeding.

23 ~~(30)~~(31) "Work product" means legal research, records, correspondence, reports, and memoranda
24 both written and oral, to the extent that they contain the opinions, theories, and conclusions of the
25 prosecutor, defense counsel, or their staff or investigators."

26

27 **Section 2.** Section 46-14-202, MCA, is amended to read:

28 **"46-14-202. Examination of defendant.** (1) If the defendant or the defendant's counsel files a
29 written motion requesting an examination or if the issue of the defendant's fitness to proceed is raised by
30 the district court, prosecution, or defense counsel, the district court shall appoint at least one qualified

psychiatrist, ~~or~~ licensed clinical psychologist, or advanced practice registered nurse or shall request the superintendent of the Montana state hospital to designate at least one qualified psychiatrist, ~~or~~ licensed clinical psychologist, ~~which designation~~ or advanced practice registered nurse, who may be or include the superintendent, to examine and report upon the defendant's mental condition.

(2) The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period not exceeding 60 days or a longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist, ~~or~~ licensed clinical psychologist, or advanced practice registered nurse retained by the defendant be permitted to witness and participate in the examination.

(3) In the examination, any method may be employed that is accepted by the medical or psychological profession for the examination of those alleged to be suffering from mental disease or defect.

(4) If the defendant is indigent or the examination occurs at the request of the prosecution, the cost of the examination must be paid by the county or the state, or both, according to procedures established under 3-5-902(1)."

Section 3. Section 46-14-204, MCA, is amended to read:

"46-14-204. Prosecution's right to examination. (1) When the defense discloses the report of the examination to the prosecution or files a notice of the intention to rely on a defense of mental disease or defect, the prosecution is entitled to have the defendant examined by a qualified psychiatrist, ~~or~~ licensed clinical psychologist, or advanced practice registered nurse.

(2) The report of the examination must be disclosed to the defense within 10 days of its receipt by the prosecution."

Section 4. Section 46-14-205, MCA, is amended to read:

"46-14-205. Access to defendant for examination. If either the defendant or the prosecution wishes the defendant to be examined by a qualified psychiatrist, ~~or~~ licensed clinical psychologist, or advanced practice registered nurse selected by the one proposing the examination in order to determine the defendant's fitness to proceed or whether the defendant had, at the time the offense was committed, a particular state of mind that is an essential element of the offense, the examiner ~~shall~~ must be permitted

1 to have reasonable access to the defendant for the purpose of the examination."

2

3 **Section 5.** Section 46-14-213, MCA, is amended to read:

4 **"46-14-213. Psychiatric or psychological testimony upon trial.** (1) Upon trial, any psychiatrist,
5 licensed clinical psychologist, or advanced practice registered nurse who reported under 46-14-202
6 46-14-206 may be called as a witness by the prosecutor or by the defense. Both the prosecution and
7 defense may summon any other qualified psychiatrist, or licensed clinical psychologist, or advanced
8 practice registered nurse to testify, but ~~no one~~ only a person who has ~~not~~ examined the defendant
9 competent to testify to an expert opinion with respect to the mental condition of the defendant,
10 distinguished from the validity of the procedure followed by or the general scientific propositions stated
11 by another witness.

12 (2) When a psychiatrist, or licensed clinical psychologist, or advanced practice registered nurse
13 who has examined the defendant testifies concerning the defendant's mental condition, the psychiatrist
14 or licensed clinical psychologist, or advanced practice registered nurse may make a statement as to the
15 nature of the examination and the medical or psychological diagnosis of the mental condition of the
16 defendant. The expert may make any explanation reasonably serving to clarify the expert's examination
17 and diagnosis, and the expert may be cross-examined as to any matter bearing on the expert's
18 competency or credibility or the validity of the expert's examination or medical or psychological diagnosis.
19 A psychiatrist, or licensed clinical psychologist, or advanced practice registered nurse may not offer an
20 opinion to the jury on the ultimate issue of whether the defendant did or did not have a particular state
21 of mind that is an element of the offense charged."

22

23 **Section 6.** Section 46-14-302, MCA, is amended to read:

24 **"46-14-302. Discharge or release upon motion of director.** (1) If the director of the department
25 of public health and human services believes that a person committed to the director's custody under
26 46-14-301 may be discharged or released on condition without danger to the person or others because
27 the person no longer suffers from a mental disease or defect that causes the person to present a
28 substantial risk of serious bodily injury or death to the person or others, a substantial risk of an imminent
29 threat of physical injury to the person or others, or a substantial risk of substantial property damage, the
30 director shall make application for the discharge or release of the person in a report to the district court.

1 by which the person was committed unless that court transfers jurisdiction to the court in the district in
2 which the person has been placed and shall send a copy of the application and report to the prosecutor
3 of the county from which the person was committed.

4 (2) Either the director of the department of public health and human services or the person may
5 also make application to the court for discharge or release as part of the person's annual treatment review.

6 (3) The court shall then appoint at least one person who is ~~either~~ a qualified psychiatrist, ~~or~~
7 licensed clinical psychologist, or advanced practice registered nurse to examine the person and to report
8 as to the person's mental condition within 60 days or a longer period that the court determines to be
9 necessary for the purpose. To facilitate the examinations and the proceedings on the examinations, the
10 court may have the person confined in any mental health facility located near the place where the court
11 sits that may be designated by the director of the department of public health and human services as
12 suitable for the temporary detention of persons suffering from mental disease or defect.

13 (4) The committed person or the person's attorney may secure a professional person of the
14 committed person's choice to examine the committed person and to testify at the hearing. If the person
15 wishing to secure the testimony of a professional person is unable to do so because of financial reasons,
16 the court shall appoint an additional professional person to perform the examination. Whenever possible,
17 the court shall allow the committed person or the person's attorney a reasonable choice of an available
18 professional person qualified to perform the requested examination. The professional person must be
19 compensated by the department of public health and human services.

20 (5) If the court is satisfied by the report filed under subsection (1) and the testimony of the
21 reporting psychiatrist, ~~or~~ licensed clinical psychologist, or advanced practice registered nurse that the
22 committed person may be discharged or released on condition because the person no longer suffers from
23 a mental disease or defect that causes the person to present a substantial risk of serious bodily injury or
24 death to the person or others, a substantial risk of an imminent threat of physical injury to the person or
25 others, or a substantial risk of substantial property damage, the court shall order the person's discharge.

26 (6) (a) If the court is not satisfied, it shall promptly order a hearing to determine whether the
27 person may safely be discharged or released on the grounds that the person no longer suffers from a
28 mental disease or defect that causes the person to present a substantial risk of:

- 29 (i) serious bodily injury or death to the person or others;
30 (ii) an imminent threat of physical injury to the person or others; or

(iii) substantial property damage.

(b) A hearing is considered a civil proceeding, and the burden is upon the state to prove by clear and convincing evidence that the person may not be safely discharged or released because the person continues to suffer from a mental disease or defect that causes the person to present a substantial risk of:

(i) serious bodily injury or death to the person or others;

(ii) an imminent threat of physical injury to the person or others; or

(iii) substantial property damage.

(c) According to the determination of the court upon the hearing, the committed person must then be discharged or released on conditions that the court determines to be necessary or must be recommitted to the custody of the director of the department of public health and human services, subject to discharge or release only in accordance with the procedures provided in ~~this section and 46-14-303 and this~~ section."

Section 7. Section 46-15-323, MCA, is amended to read:

"46-15-323. Disclosure by defendant. (1) At any time after the filing in district court of an indictment or information, the defendant, in connection with the particular crime charged, ~~shall and upon~~ written request of the prosecutor and approval of the court:

(a) shall appear in a lineup;

(b) shall speak for identification by witnesses;

(c) must be fingerprinted, palm printed, footprinted, or voiceprinted;

(d) shall pose for photographs not involving reenactment of an event;

(e) shall try on clothing;

(f) shall permit the taking of samples of the defendant's hair, blood, saliva, urine, or other specified materials that do not involve ~~no~~ unreasonable bodily intrusions;

(g) shall provide handwriting samples; or

(h) shall submit to a reasonable physical or medical inspection; however, the inspection does ~~not~~ include psychiatric or psychological examination.

(2) Within 30 days after the arraignment or at a later time as the court may for good cause permit the defendant shall provide the prosecutor with a written notice of the defendant's intention to introduce

1 evidence at trial of good character or the defenses of alibi, compulsion, entrapment, justifiable use of force,
2 or mistaken identity.

3 (3) Within 10 days after receiving a report of the defendant's mental condition from a psychiatrist,
4 or psychologist, or advanced practice registered nurse or at a later time as the court may for good cause
5 permit, the defendant shall provide the prosecutor with a written notice of the defendant's intention to
6 introduce evidence at trial of the defense that ~~due to~~ because of a mental disease or defect, the defendant
7 did not have a particular state of mind that is an essential element of the offense charged.

8 (4) The notice must specify for each defense the names and addresses of the persons, other than
9 the defendant, whom the defendant may call as witnesses in support of the defense, together with all
10 written reports or statements made by them, including all reports and statements concerning the results
11 of physical examinations, scientific tests, experiments, or comparisons, except that the defendant need
12 not include a privileged report or statement unless the defendant intends to use the privileged report or
13 statement, or the witness who made it, at trial.

14 (5) Prior to trial, the defendant may, upon motion and showing of good cause, add to the list of
15 witnesses the names of any additional witnesses and disclose their reports or statements as required by
16 this section. After the trial commences, no ~~witnesses~~ witness may be called by the defendant in support
17 of these defenses unless the name of the witness is included on the list and the witness's report or
18 statement has been disclosed as required by this section, except for good cause shown.

19 (6) Within 30 days after the arraignment or at a later time as the court may for good cause permit,
20 the defendant shall make available to the prosecutor for testing, examination, or reproduction:

21 (a) the names, addresses, and statements of all persons, other than the defendant, whom the
22 defendant may call as witnesses in the defense case in chief, together with their statements;

23 (b) the names and addresses of experts whom the defendant may call at trial, together with the
24 results of their physical examinations, scientific tests, experiments, or comparisons, including all written
25 reports and statements made by these experts in connection with the particular case; and

26 (c) all papers, documents, photographs, and other tangible objects that the defendant may use
27 at trial.

28 (7) The defendant's obligation under this section extends to material and information within the
29 possession or control of the defendant, defense counsel, and defense counsel's staff or investigators.

30 (8) Upon motion of the prosecutor showing that the prosecutor has substantial need in the

1 preparation of the case for additional material or information not otherwise provided for, that
2 prosecutor is unable, without undue hardship, to obtain the substantial equivalent by other means, and
3 that disclosure of the material or information will not violate the defendant's constitutional rights, the
4 court, in its discretion, may order any person to make the material or information available to the
5 prosecutor. The court may, upon request of any person affected by the order, vacate or modify the order
6 if compliance would be unreasonable or oppressive. The defense counsel may not be required to prepare
7 or disclose summaries of witnesses' testimony."

8

9 NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

10

- END -

INDEX TO BILLS IN COMMITTEE

September 10, 2001

- Committee: (S) Public Health, Welfare and Safety -

02:27 PM

-
- SB 422** **SPONSOR:** Grimes, Duane **SHORT TITLE:** revise definitions for managed care plan networks
 REFERRED ON: 02/07/2001
 FINAL DISPOSITION: 02/23/2001 (S) Missed Deadline for General Bill Transmittal
-
- SB 434** **SPONSOR:** Berry, Dale **SHORT TITLE:** Restrict nursing rule on name badges
 REFERRED ON: 02/09/2001 **HEARD ON:** 02/17/2001
 TABLED ON: 02/19/2001
 FINAL DISPOSITION: 02/23/2001 (S) Missed Deadline for General Bill Transmittal
-
- SB 440** **SPONSOR:** Christiaens, Chris **SHORT TITLE:** Disclosure to consumers health care service cost participation requirements
 REFERRED ON: 02/10/2001 **HEARD ON:** 02/17/2001
 EXECUTIVE ACTION: 02/20/2001 -Bill Passed as Amended -- VOTE: 7 - 3
 FINAL DISPOSITION: 04/21/2001 Chapter Number Assigned
-
- SB 442** **SPONSOR:** Cobb, John **SHORT TITLE:** Revolving fund for low-income working families
 REFERRED ON: 02/10/2001 **HEARD ON:** 02/17/2001
 EXECUTIVE ACTION: 02/20/2001 -Bill Passed -- VOTE: 7 - 3
 FINAL DISPOSITION: 04/30/2001 Chapter Number Assigned
-
- SB 454** **SPONSOR:** Waterman, Mignon **SHORT TITLE:** Multiagency initiative for hi-cost SED children cases
 REFERRED ON: 02/13/2001 **HEARD ON:** 02/16/2001
 EXECUTIVE ACTION: 02/20/2001 -Bill Passed -- VOTE: 10 - 0
 FINAL DISPOSITION: 04/28/2001 Chapter Number Assigned
-
- SB 458** **SPONSOR:** Waterman, Mignon **SHORT TITLE:** Revise admission to state hospital
 REFERRED ON: 02/13/2001 **HEARD ON:** 02/16/2001
 TABLED ON: 03/13/2001
 FINAL DISPOSITION: 03/29/2001 (S) Missed Deadline for Revenue Bill Transmittal
-
- SB 459** **SPONSOR:** Franklin, Eve **SHORT TITLE:** Allow APRNs to examine, report, and testify on defendant's mental condition
 REFERRED ON: 02/13/2001 **HEARD ON:** 02/16/2001
 EXECUTIVE ACTION: 02/19/2001 -Bill Passed -- VOTE: 9 - 0
 FINAL DISPOSITION: 04/20/2001 Chapter Number Assigned
-

MINUTES

**MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY**

Call to Order: By **CHAIRMAN AL BISHOP**, on February 16, 2001 at 3 P.M., in Room 317-A Capitol.

ROLL CALL

Members Present:

Sen. Al Bishop, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Chris Christiaens (D)
Sen. Bob DePratu (R)
Sen. Eve Franklin (D)
Sen. Don Hargrove (R)
Sen. Dan Harrington (D)
Sen. Royal Johnson (R)
Sen. Emily Stonington (D)

Members Excused: Sen. Jerry O'Neil (R)
Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Jeanne Forrester, Committee Secretary
Susan Fox, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 459, 2/13/2001; SB 454,
2/13/2001; SB 458, 2/13/2001;
SB 466, 2/13/2001
Executive Action: SB 459; SB 221; SB 341

HEARING ON SB 459

Sponsor: SEN. EVE FRANKLIN, SD 21, GREAT FALLS

Proponents: Ed Amberg, Director Warm Springs State Hospital

**Erin McGowan, Montana Council of Community Mental
Health Centers**

Gene Harrin, Board of Visitors

Sami Butler, Montana Nurses Association

**Dr. Gary Mihelish, National Alliance for the Mentally
Ill**

**Charley McCarthy, Mental Health Association of
Montana**

Opponents: None

Opening Statement by Sponsor:

SEN. EVE FRANKLIN, SD 21, GREAT FALLS introduced SB 459. This is an act that would allow Advanced Practice Registered Nurses (APRN) with a clinical speciality in psychiatric mental health nursing perform examinations and to report and testify regarding a defendant's fitness to proceed. She presented a letter in support of SB 459 from **John Strandell EXHIBIT(1)** and another one from **Sharon Howard EXHIBIT(2)**.

Proponents' Testimony:

Ed Amberg, Director of the State Hospital said they are in support of this bill and when appropriate they would like to assign those responsibilities to an APRN.

Erin McGowan, Montana Council of Community Mental Health Centers said they are in support of this bill.

Gene Harrin, Board of Visitors said they support this bill because it expands access to mental health care.

Sami Butler, Montana Nurses Association said she is in support of this bill.

Dr. Gary Mihelish, President of the National Alliance for the Mentally Ill in Montana said they are strongly in support of this bill.

Charley McCarthy, Mental Health Association of Montana rose in support of this bill.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. BISHOP asked what does the term clinical speciality mean.

SEN. FRANKLIN said the nurses can specialize in different aspects of nursing such as administration, education, etc.

Closing by Sponsor:

SEN. FRANKLIN thanked the committee for a good hearing.

EXECUTIVE ACTION ON SB 459

Motion/Vote: SEN. GRIMES moved that SB 459 DO PASS. Motion carried 9-0.

HEARING ON SB 454

Sponsor: SEN. MIGNON WATERMAN, SD 26, HELENA

Proponents: Jani McCall, Deaconess Billings Clinic
Mona Jamison, Shodair Children's Hospital
John Wilkerson, Children's Home
Dan Anderson, DPHHS
Jeff Olson
Steve Yeakel, Montana Council for Maternal and Child Health
Ann Westerman, Deaconess Billings Clinic
Erin McGowan, Montana Community Mental Health Centers
Marty Wangen, Montana Psychological Association
Twill Cosign, Montana State Foster and Adoptive Parents Association
Colleen Murphy, Montana Chapter of the National Association of Social Workers
Gene Harrin, Board of Visitors
Bonnie Adee, Mental Health Ombudsman

Opponents: None

Opening Statement by Sponsor:

SEN. MIGNON WATERMAN, SD 26, HELENA introduced SB 454. This is an act to create a multiagency children's services initiative for children who require services from multiple agencies. Also, to have new care and treatment plans and services developed to treat children in the least restrictive environment. She said she has been working with the Mental Health Advisory Council to bring forth this bill. She also said the bill will terminate in June

INDEX TO BILLS IN COMMITTEE

September 10, 2001

- Committee: (H) Human Services -

01:40 PM

SB 440 **SPONSOR:** Christiaens, Chris **SHORT TITLE:** Disclosure to consumers health care service cost participation requirements

REFERRED ON: 03/03/2001 **HEARD ON:** 03/23/2001

EXECUTIVE ACTION: 03/26/2001 - Bill Concurred -- VOTE: 18 - 0

FINAL DISPOSITION: 04/21/2001 Chapter Number Assigned

SB 442 **SPONSOR:** Cobb, John **SHORT TITLE:** Revolving fund for low-income working families

REFERRED ON: 03/03/2001 **HEARD ON:** 03/23/2001

EXECUTIVE ACTION: 03/26/2001 - Bill Concurred as Amended -- VOTE: 13 - 5

FINAL DISPOSITION: 04/30/2001 Chapter Number Assigned

SB 454 **SPONSOR:** Waterman, Mignon **SHORT TITLE:** Multiagency initiative for hi-cost SED children cases

REFERRED ON: 03/03/2001 **HEARD ON:** 03/26/2001

EXECUTIVE ACTION: 03/27/2001 - Bill Concurred -- VOTE: 18 - 0

FINAL DISPOSITION: 04/28/2001 Chapter Number Assigned

SB 459 **SPONSOR:** Franklin, Eve **SHORT TITLE:** Allow APRNs to examine, report, and testify on defendant's mental condition

REFERRED ON: 03/03/2001 **HEARD ON:** 03/21/2001

EXECUTIVE ACTION: 03/22/2001 - Bill Concurred -- VOTE: 17 - 1

FINAL DISPOSITION: 04/20/2001 Chapter Number Assigned

SB 461 **SPONSOR:** Franklin, Eve **SHORT TITLE:** Informed consent for hysterectomy

REFERRED ON: 03/03/2001 **HEARD ON:** 03/26/2001

TABLED ON: 03/26/2001

FINAL DISPOSITION: 04/26/2001 (H) Died in Standing Committee

SB 466 **SPONSOR:** Waterman, Mignon **SHORT TITLE:** Revise mental health commitment laws

REFERRED ON: 03/21/2001 **HEARD ON:** 03/26/2001

EXECUTIVE ACTION: 03/27/2001 - Bill Concurred as Amended -- VOTE: 17 - 1

FINAL DISPOSITION: 04/21/2001 Chapter Number Assigned

SB 473 **SPONSOR:** Waterman, Mignon **SHORT TITLE:** Revise Board of Visitors laws

REFERRED ON: 03/03/2001 **HEARD ON:** 03/26/2001

EXECUTIVE ACTION: 03/27/2001 - Bill Concurred as Amended -- VOTE: 18 - 0

FINAL DISPOSITION: 04/21/2001 Chapter Number Assigned

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON HUMAN SERVICES

Call to Order: By **CHAIRMAN BILL THOMAS**, on March 21, 2001 at 3:00 P.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Bill Thomas, Chairman (R)
Rep. Roy Brown, Vice Chairman (R)
Rep. Trudi Schmidt, Vice Chairman (D)
Rep. Tom Dell (D)
Rep. John Esp (R)
Rep. Tom Facey (D)
Rep. Dennis Himmelberger (R)
Rep. Larry Jent (D)
Rep. Michelle Lee (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Rick Ripley (R)
Rep. Clarice Schrupf (R)
Rep. Jim Shockley (R)
Rep. James Whitaker (R)

Members Excused: Rep. Daniel Fuchs (R)

Members Absent: None.

Staff Present: David Niss, Legislative Branch
Pati O'Reilly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 248, SB 288, SB 324, SB 459, SB 476, 3/18/2001
Executive Action: SB 288, SB 324, SB 459, SB 476, SB 361, SB 290, SB 477, SB 181

dependency center." Ms. Blazer said the legislative history indicates that this was a cleanup bill, a consolidation of some licensing activities, so they were trying to decide how to redefine a facility that is licensed by the state. Mr. Loendorf, she thinks without asking any of these groups, suggested that the way that they were now going to redefine health care facility would end up having the unintended effect of including the four additional groups that are on line 28 of this bill, and he hadn't asked those groups. She assumes that the other three groups had never been a part of the panel and now do not want to be. He didn't specifically ask the chemical dependency facilities whether they'd been a part before, and they had been since the inception of the medical-legal panel program. **Rep. Noennig** asked if the mistake was that the bill was amended without asking the people who were involved in it. Ms. Blazer said that is correct. **{Tape : 3; Side : A; Approx. Time Counter : 13.4 - 15}**

Closing by Sponsor:

Sen. Harrington said the bill is quite self-explanatory, and he thanked the committee for their time. **{Tape : 3; Side : A; Approx. Time Counter : 15. - 15.3}**

EXECUTIVE ACTION ON SB 324

Motion/Vote: **REP. JENT** moved that **SB 324 BE CONCURRED IN**. Motion carried unanimously. **Rep. Cyr** will carry the bill. **{Tape : 3; Side : A; Approx. Time Counter : 15.3 - 16.1}**

HEARING ON SB 459

Sponsor: **SEN. EVE FRANKLIN**, SD 21, Great Falls

Proponents: **John Connor**, Mt. County Attorneys' Assn.
Sharon Howard, Great Falls, Health Services Dir. &
Chief Medical Officer, Cascade County Adult
Detention Center
Kathy McGowan, Ex. Dir., Mt. Council of Community
Mental Health Centers
Sami Butler, Mt. Nurses' Assn.
Jani McCall, Deaconess Billings Clinic & Mt. Assn. of
Homes & Services for Children

Opponents: None

Opening Statement by Sponsor:

SEN. EVE FRANKLIN, SD 21, Great Falls, said this is another advanced practice registered nurse bill. The scope of practice of nursing in Title 37 allows for certain functions. There are places in statute where the law has not caught up with the scope of practice. She is a clinical specialist in nursing and has done some work at the Cascade County regional jail, and in that process has seen how patients are really limited in getting the mental health treatment that they need. They may be in jail but not court adjudicated, they may be mentally ill and need to get to treatment, and there's the issue of fitness to proceed. In the statute, there are only two areas of practice that can do that right now, and they want to add advanced practice registered nurses to that group of people. The reason gets back to the basic access to care issue. They have been in situations in that setting and probably other settings have similar experiences where it is simply difficult to find an individual who can do the work appropriately. A psychiatrist or psychologist is able to do it, and there are instances when someone with the appropriate training who's also an APRN can also determine fitness to proceed. The definition of fitness to proceed is in statute, and for the psychiatric professional the straightforward criteria is, does this person have a mental defect? Does the defect constitute a DSM IV diagnosis? That's the diagnostic and statistical manual, which she calls the cookbook of psychiatric diagnoses. If the person has a mental defect and if it constitutes a DSM IV diagnosis, mostly important for fitness to proceed is whether the diagnosis and mental defect is of such severity that it is interfering with the individual's right to understand their charges and participate in their defense. This is really a clinical psychiatric decision that is made, and APRNs who have the clinical specialty in psychiatry are well able to make that determination. Again, the motivation for this piece of legislation is to allow people to have the appropriate triage and decision about where they need to get to if they come to a jail setting; do they need to be in jail or do they need to be in treatment, and to expedite that decision appropriately.

EXHIBIT(huh64a15)

{Tape : 3; Side : A; Approx. Time Counter : 16.1 - 21.2}

Proponents' Testimony:

John Connor, Mt. County Attorneys' Assn., is a prosecutor with the Attorney General's office. MCAA supports this bill. There is a lot of writing here, as required by legislative rules, for a relatively small change, but it's one that is of some significance to the kind of practice that they do. Sen. Franklin had spent a fair amount of time talking with county attorneys about this and the implications of it for the kinds of cases that they prosecute. They have come to the conclusion that this is a very good idea. It will expedite situations, particularly in cases where the defendant is being held

in custody and there is some question about his or her competence to proceed. Rather than wait around to find a psychiatrist or psychologist who can come and make that determination by interview, if there is a qualified psychiatric nurse available to do it, that makes it easier to come to that conclusion early on for the benefit of all of the parties and everyone is better served. In the long run, it will save money because there would be more access and probably less cost when we're talking about the people making those kinds of assessments. He wouldn't presume to speak for the defense, but his wife, who is chief public defender, thought it would be great, for the same reasons that the prosecution does. It would just make easier access when somebody is available, which benefits both sides. He encourages support of the bill. {Tape : 3; Side : A; Approx. Time Counter : 21.2 - 23.2}

Sharon Howard, Great Falls, Health Services Dir. & Chief Medical Officer, Cascade County Adult Detention Center, submitted written testimony in support of the bill. {Tape : 3; Side : A; Approx. Time Counter : 23.2 - 24}

Kathy McGowan, Ex. Dir., Mt. Council of Community Mental Health Centers, said community mental health centers highly value the APRNs that they are able to hire and would very much support this bill. Especially in the rural areas, if they can hire these nurses and use them in a lot of different settings, they really value them and don't want to let them go once they get them, really recognizing that they are priceless. This would be one more way that they could use them and that the system could use them. They very much support the bill. {Tape : 3; Side : A; Approx. Time Counter : 24 - 24.5}

Sami Butler, Mt. Nurses' Assn., said the committee had previously heard her testimony regarding psych APRNs, and MNA strongly supports this bill. {Tape : 3; Side : A; Approx. Time Counter : 24.5 - 25}

Jani McCall, Deaconess Billings Clinic and Mt. Assn. of Homes and Services for Children, said they strongly support the bill. It makes sense in terms of service and care for individuals. If you want to look at quality, access, cost effectiveness, this bill does this. Montana is huge geographically but it has a very small population. It is very difficult to find professionals, particularly out in the rural areas, and this bill addresses this. It's an absolutely good thing to do, and she urges support. EXHIBIT(huh64a16) {Tape : 3; Side : A; Approx. Time Counter : 25. - 25.7}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

Rep. Jent asked Sami Butler if APRNs are allowed to give a diagnosis as part of their duties, basically a DSM IV diagnosis of mental disease and defect. Ms. Butler said they are. **Rep. Jent** asked if APRNs are allowed to prescribe psychotropic medications without a doctor looking over her shoulder. Ms. Butler said they can.

Rep. Facey said he couldn't write fast enough and asked the sponsor what else she said after "fitness to proceed, a person has to have a mental defect and does the defect fit into DSM IV definition." Sen. Franklin said the rest was, is it of such severity that they cannot understand their charges or cooperate with their defense. Rep. Facey asked if those three cases were anywhere in the bill. Sen. Franklin said she thinks it is in a different place in statute. It's not in this bill. The whole issue of fitness to proceed issues are dealt with in a different part of statute. She said there also is the issue of intent, can they form intent, and that has come up in some other arenas. With fitness to proceed, sometimes that isn't always dealt with initially, but that's another issue as well. That is almost retroactive to the actual crime that was committed, and oftentimes that is not actually done in fitness to proceed, so it's a little more limited.

Rep. Dell asked Sami Butler if this is something that other surrounding states are doing. Ms. Butler said she doesn't have that information but would get it for the committee. Sen. Franklin said she isn't sure what the surrounding states are doing and whether or not they have taken this step. Rep. Dell asked if this was just something that they thought would make the system work a little bit quicker. **Sen. Franklin** said it is really very pragmatically oriented. This was a way to make sure people got the care they needed, and has come out of some real experiences where they saw that they could expedite care and could have made the determination more quickly if they had been able to use personnel that were available.

Rep. Noennig asked the sponsor if this was the third bill related to APRNs and if she could explain what each of the bills were doing. Sen. Franklin said the bills are linked. Her task, following Legislative Finance Committee and HJR 35, was to go through statute and try to find the places in law where the statute hadn't kept up with scope of practice. SB 108 allowed APRNs to explicitly in law function at the State Hospital and act as professional persons. SB 290, which actually was independent and came from the Mt. Nurses'

Assn., allowed APRNs to sign death certificates. The last bill is this bill, SB 459. Rep. Noennig asked Sen. Franklin is she is an APRN and she said she is. She considers these bills to be "patient relief" bills, because APRNs see that the work needs to be done, they know how to do it, they are ready to do it, and scope of practice suggests that they should do it, but they can't do it because statutorily it is explicitly not stated. {Tape : 3; Side : A; Approx. Time Counter : 25.7 - 30}{Tape : 3; Side : B; Approx. Time Counter : 0 - 3.7}

Closing by Sponsor:

Sen. Franklin said the issue is clear. She thanked the committee for their indulgence and hoped that they could support the bill. {Tape : 3; Side : B; Approx. Time Counter : 3.7 - 4.7}

EXECUTIVE ACTION ON SB 459

Motion/Vote: REP. ESP moved that SB 459 BE CONCURRED IN. Motion carried 17-1 with Jent voting no. Rep. Newman will carry the bill. {Tape : 3; Side : B; Approx. Time Counter : 4.7 - 5.7}

HEARING ON SB 476

Sponsor: SEN. BOB KEENAN, SD 38, Bigfork

Proponents: Rose Hughes, Ex. Dir., Mt. Health Care Assn.
Judy Peterson, Dir., Extended Care Services, MHA
Denzel Davis, Admin., Quality Assurance Division,
DPHHS
Connie Hallock, Glasgow, Valley View Nursing Home
Amy Sheen, R.N.
Nancy Driver, Helena, Admin., Rocky Mountain Care
Center

Opponents: None

Opening Statement by Sponsor:

SEN. BOB KEENAN, SD 38, Bigfork, said there is an amendment to SB 476 to change a date to give the department more time. In nursing homes, generally there are two major problems: Medicaid rates are too low and the regulatory climate is time-consuming, costly, and frustrating for staff and also for the residents and their families. This bill is a first step to try to address those problems. It has some rulemaking authority in it, which was a